



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Miscellaneous Bail Application No. 10631/2024

(At Present Lodged in District Jail, Bhilwara)

-----Petitioner

Versus

State Of Rajasthan, Through PP

-----Respondent

For Petitioner(s) : Mr. Padam Singh Solanki
For Respondent(s) : Mr. Sharwan Singh, PP

HON'BLE MR. JUSTICE RAJENDRA PRAKASH SONI

Order

Reportable

08/10/2024

1. Petitioner is lugged and locked in F.I.R No.174/2024 of Police Station Subhashnagar District Bhilwara, for the offence under Section(s) 363, 366, 342, 376 of the I.P.C. and under Section 3/4 of POCSO Act. He has filed this application for restoration of liberty under section 439 of the Code of Criminal Procedure, 1973 (Section 483 of new Code).

2. I may briefly refer to the relevant aspects of the case of prosecution, as emerging from the F.I.R. allegations which are that on 24.03.2024, complainant Badrilal, filed a report stating that his 16-year-old daughter Ms. "P" , had left home at around 12:00 noon without informing anyone and could not be found despite searching. He suspected that had kidnapped her. During the investigation, the victim revealed that , her maternal uncle



(*Mousaji*) had raped her. The statements of both the victim and her father have been recorded during the trial.

3. Shri Padam Singh Solanki, learned counsel representing the petitioner vehemently urged that victim left her house on her own without informing any family member which indicated her consent and contradictions have been found between her police statement, statement under Section 164 of Cr.P.C., and the statements recorded in court during the trial, making her testimony unreliable. In her court statements, the victim has changed the entire narrative of the incident and due to a family dispute, she has falsely implicated the petitioner in this case. It is further argued that the petitioner is innocent person and a false case has been foisted against him; that entire allegation so leveled by the complainant against the petitioner is totally false and baseless. Therefore, considering the facts and circumstances the petitioner may be released on bail.

4. From the other side, learned Public Prosecutor for the State has strongly objected the submissions made by learned counsel for the applicant and submitted that keeping in view the gravity of offence alleged to have been committed by him, petitioner does not deserve any leniency. He thus, prayed that in the facts of the present case, petitioner be kept in the custody.

5. I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and have perused the record carefully.



6. Having given anxious consideration to rival submissions and carefully examined the record, I am clearly of the view that in this case, husband of the victim's mother's sister (*Mousaji*) has raped the minor victim. Upon perusal, the contradictions in various statements of the victim are of a minor nature and do not carry significant weight. The seriousness of the offence, particularly given the involvement of a familial relationship, makes the crime graver and warrants stricter consideration. Sexual offence against minor is a heinous crime under the law. This court recognises that some contradictions in the statements of minor victim, especially in cases of sexual abuse, are likely to occur due to the traumatic nature of such incidents. Minor inconsistencies in the victim's testimony are not sufficient grounds to grant bail, particularly when the overall credibility of the allegations remains intact.

7. The POCSO Act creates a presumption of guilt once the victim's testimony is found credible. The burden then shifts to the petitioner to prove his innocence and in the cross-examination of the victim, the petitioner has failed to provide any convincing defense. Given the vulnerable state of the victim and the fact that instant child sexual abuse case, involves an individual who have access to minor victim within the family, I am of the considered opinion that the petitioner is not entitled to be released on bail.

8. As a consequence of the above discussion, this Court is not inclined to extend indulgence of bail to the petitioners under Section 439 Cr.P.C. and hence, the instant Bail Application stands



dismissed as being devoid of merit. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

9. However, considering the facts, trial court is directed to expedite the trial and to try and complete the same at the earliest.

(RAJENDRA PRAKASH SONI),J

Anshul/-